D.B. CIVIL WRIT PETITION NO.811/2007

DATE OF ORDER : 24.07.2007.

HON'BLE MR. P.B. MAJMUDAR,J.
HON'BLE MR. DEO NARAYAN THANVI,J.

Mr.Ramit Mehta, for the petitioner.
Mr.V.K. Mathur, for the respondents

This petition has been filed by the petitioner challenging the issuance of show cause notice dtd.11.5.2006 (Annex.3). The show cause notice was issued by the Commissioner of Central Excise, Jaipur-II. By the aforesaid show cause notice, the petitioner is called upon to show cause and explain as to why the service tax amounting to Rs.91,67,098/- and education cess amounting to Rs.28,235/- should not be demanded and recovered from the petitioner under the erstwhile Section 73(1)(a) and proviso to Section 73(1) of the Finance Act, 1994. The petitioner has also been asked to show cause and explain as to why interest as applicable should not be recovered from him under Section 75 of the Finance Act, 1994. Show cause notice is also issued in connection with penalty. It is the aforesaid show cause notice which is impugned at the instance of the petiitoner.

The learned advocate Mr. Ramit Mehta submitted that issuance of show cause notice is without any basis and foundation and under the facts and circumstances, no show

cause notice could have been issued. He submitted that issuance of show cause notice is against the settled principles of law. It is submitted that as per the Rules, it cannot be said that the petitioner has violated any provision of law prevalent at the relevant time.

The learned counsel for the Union of India vehemently argued that the petitioner can raise all these points in pending matter before the Commissioner as ultimately, the Commissioner after application of mind is required to take decision in accordance with law.

We have heard the learned counsel for the parties. We have also gone through the papers.

It is not in dispute that the petition is filed at the show cause notice stage. This court normally would not like to interfere at such a stage unless it is found that the authority which issued the notice has no jurisdiction to issue such notice. Whether the Commissioner was justified in issuing such notice is a question which can be raised before the Commissioner by filing appropriate reply . In this connection, reference is required to be made to the decision of Hon'ble Supreme court in the case of Trade Tax Officer, Saharanpur V/s Royal Trading Co. reported in (2005)11 SCC 518, wherein it is observed by the Hon'ble

Supreme Court as under:

> "1. These appeals are against the judgment of the Allahabad High Court dated 21.1.2000. The respondent Company were clearing their gods on the basis that they were leather sheets within the meaning of Section 14 of the Central Sales Tax Act. A show-cause notice was issued to them claming that the items cleared by them were not leather sheets and that a higher duty was required to be paid. The respondents filed a writ petition challenging the issuance of the show-cause notice. The High Court ignoring the well-settled law that against a mere issuance of a show-cause notice a court should be reluctant to interfere, purported to go into the facts and quashed the show-cause notice in a mechanical way. In our view, the approach of the High Court was entirely wrong. All that had been done was that a show cause was issued. After the respondents filed their reply, the notice may have been dropped or if the reply was not satisfactory based on the reply further inquiries could have been made by the appellants. Adjudication proceedings must not be stalled in the manner done by the High Court."

Considering the aforesaid aspect of the matter, we are of the opinion that instead of entertaining this petition and considering all these aspects at this stage, it would be just and proper to relegate the petitioner to the authority concerned. It is pointed out to the Court that the petitioner has already filed reply to the show cause notice before the Commissioner. We however, give one more opportunity to file additional reply if any. Same may be filed within a period of 8 weeks from today and after receiving such additional reply if any, the Commissioner shall proceed with the matter in accordance with law.

It is clarified that we have not examined the merits of the case as it is for the Commissioner to consider the same in accordance with law. The Commissioner may accordingly take appropriate decision on the show cause notice in accordance with law after hearing the petitioner. The petitioner also to cooperate in such hearing.

In view of the reasons stated above, the learned counsel for the petitioner wants to withdraw this petition with the liberty to raise all the points before the Commissioner. The permission is granted.

Accordingly, the writ petition is dismissed as withdrawn with the liberty sought for.

(DEO NARAYAN THANVI)J. (P.B.MAJMUDAR)J.

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